

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ADONIS ALEXANDER FRYE,

Defendant-Appellant.

UNPUBLISHED

April 15, 2010

No. 288444

Washtenaw Circuit Court

LC No. 07-002249-FC

Before: DAVIS, P.J., and DONOFRIO and STEPHENS, JJ.

DAVIS, P.J. (*concurring*)

I concur with the majority in all respects other than their determination that the trial court abused its discretion by admitting into evidence the certified record of defendant's prior felony conviction for delivery of marijuana.

Defendant's defense was that he acted in self-defense, due to the victim's purported propensity for violence. Although motive is not ordinarily part of the prosecutor's case, intent is highly relevant to whether defendant actually did act in self-defense. Because defendant raised the issue, the prosecutor was required to affirmatively disprove defendant's claim of self-defense. The existence of a retaliatory or vengeful motive for the shooting—in other words, offensive rather than defensive—is a “fact that is of consequence to the determination of the action,” and therefore any evidence making such a motive more or less likely would be relevant. MRE 401.

The evidence indicated that, among other things, defendant sold marijuana as a significant part of his means of livelihood. The victim apparently had some influence on defendant's acquisition of that marijuana for resale, and because of a dispute between the two of them, the victim had threatened defendant that he would “never make no more money on the street.” There was some evidence indicating that defendant was angry with the victim, possibly aggravated by this threat to cut off defendant's livelihood. The fact that defendant was previously convicted for delivery of marijuana supports the prosecutor's theory that defendant shot the victim for reasons unrelated to self-defense. The specific nature of defendant's prior conviction therefore had probative value independent of the bare fact that defendant was ineligible to possess a firearm.

I agree with the majority's observation that in an *ordinary* case, a defendant's offer to stipulate to being ineligible to possess a firearm due to a prior conviction will establish that

element of the relevant offense. Therefore, in an *ordinary* case, if a defendant so stipulates, the record of that prior conviction would be irrelevant. However, in this case, defendant's prior conviction was relevant to more than just whether he was ineligible to possess the firearm, but also to his assertion of self-defense. His prior offense was not one that is typically regarded as particularly atrocious or likely to inflame the jury's passion, particularly in a jurisdiction where possession of small amounts of marijuana has been decriminalized by ordinance, and certainly delivery of marijuana is less heinous than the murder for which defendant was charged. It is difficult to see how admission thereof posed much risk of unfair prejudice, particularly enough prejudice to outweigh the probative value of the evidence.

For these reasons, I conclude that the trial court did not abuse its discretion by admitting the certified record of defendant's prior delivery of marijuana conviction. I do note, that had the trial court made any sort of record in support of its ruling this discussion would likely have been unnecessary and a per curiam opinion would have issued in this case.

/s/ Alton T. Davis